

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 19 1998
DEPARTMENT OF REAL ESTATE

* * *

By Jonathan Contreras

In the Matter of the Application of)
THANH DINH TRAN,)
Respondent.)

NO. H-7529 SF
N-1998010131

DECISION

The Proposed Decision dated April 17, 1998, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on June 9 1998.

IT IS SO ORDERED 4/28 1998.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	
THANH DINH TRAN,)	Case No. H-7529 SF
)	
Respondent.)	OAH No. N 1998010131
_____)	

PROPOSED DECISION

This matter was heard before Melissa G. Crowell, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 8, 1998, in Oakland, California.

Larry B. Alamao, Attorney in Charge, represented the Department of Real Estate.

Thanh Dinh Tran was present and represented himself.

FINDINGS OF FACT

1. Les R. Bettencourt made and filed the statement of issues in his capacity of Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.
2. On August 28, 1997, respondent Thanh Dinh Tran applied to the Department for a real estate salesperson license.
3. On August 19, 1997, in the Superior Court of California, State of California, County of Santa Clara, respondent was convicted, on his plea of nolo contendere, of receiving stolen property (Pen. Code, § 496), a felony. The offense involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate licensee (Cal. Code Regs., tit. 10, § 2910).

4. The circumstances of the offense were that on September 10, 1996, respondent attempted to sell a stolen Sun Micro System computer to Brandon Unger of Recurrent Technologies. The sale had been arranged through the police department, and respondent was arrested at the scene.

5. Respondent denies knowing that the computer was stolen; he purchased the computer from a man named "Rich." Respondent believes that Unger, who was a competitor with respondent, had set him up. He asserts that he pleaded nolo contendere to avoid additional criminal charges and because he did not wish to pay the costs associated with a trial.

6. On August 19, 1997, in the Superior Court of California, State of California, County of Santa Clara, respondent was convicted, on his plea of nolo contendere, of concealing/selling/withholding stolen property (Pen. Code, § 496), a felony. The offense involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate licensee.

7. The circumstances of the offense were as follows: Respondent purchased a used Tektronix oscilloscope which did not have a serial number. The oscilloscope had been stolen. On November 21, 1996, respondent took the oscilloscope to a Tektronix repair facility for a repair and to obtain a new serial number tag. The store contacted the police. Respondent was arrested when he attempted to pick up the oscilloscope.

8. Respondent denies knowing that the oscilloscope was stolen. He avers that a man from whom he purchased the item had told him that the serial number had been removed accidentally. Respondent's testimony was not believable.

9. The two separate and distinct offenses were joined for purposes of sentencing on August 19, 1997. Respondent was placed on three years formal probation, with the condition, among others, that he serve 8 months in county jail. Respondent was ordered to pay specified fines and assessments, but was not ordered to make restitution. Respondent was approved for work furlough and was released after 5½ months. He continues to be on probation. It was not established that respondent has paid the fines and assessments ordered by the court.

10. Respondent is 40 years old. He is divorced and supports two children. Respondent's brother is a real estate salesperson. Respondent states that he has always had an interest in real estate, but has not had the opportunity to learn about real estate until now. It was not established whether respondent has been gainfully

employed since his release from work furlough. No letters of references were submitted.

DETERMINATION OF ISSUES

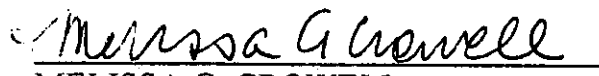
1. By reason of the matters set forth in Findings 3 and 6, cause for denial of respondent's application for a real estate license exists under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b) in that respondent was convicted of two separate offenses which involve moral turpitude and which are substantially related to the qualifications, functions or duties of a licensee of the Department.

2. Respondent does not meet any of the relevant criteria of rehabilitation set forth in section 2911 of title 10 of the California Code of Regulations. In particular it is noted that the convictions are less than two years old, and respondent continues to be on felony probation. His testimony at the hearing concerning the circumstances of the offenses was not credible. For all these reasons, respondent has failed to demonstrate that he possesses the trustworthiness necessary to conduct the licensed activity in an honest manner. It would therefore be ~~contrary~~ to the public interest to grant him a license even on a restricted basis.

ORDER

Respondent's application for a real estate salesperson license is denied, by reason of the above Determinations.

DATED: April 17, 1998


MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 11 1998

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

THANH DINH TRAN,

Respondent

Case No. H-7529 SF

OAH No.

TO: FLAG SECTION

FROM: SACTO. LEGAL

CONTINUED
NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, World Savings Tower,

1970 Broadway, Second Floor, Oakland, California 94612

on Wednesday -- April 8, 1998, at the hour of 10:30 AM, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: February 11, 1998

By

LARRY A. ALAMAO

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 9 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

THANH DINH TRAN,

Respondent

By Kathleen Contreras

Case No. H-7529 SF

OAH No. _____

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, World Savings Tower,

1970 Broadway, Second Floor, Oakland, California 94612

on Wednesday -- February 11, 1998, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: January 8, 1998

DEPARTMENT OF REAL ESTATE

By David B. Seals

DAVID B. SEALS

Counsel

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
DEC 22 1997
DEPARTMENT OF REAL ESTATE

By John M. ...

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7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 THANH DINH TRAN,) NO. H-7529 SF
14) STATEMENT OF ISSUES
15 Respondent.)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against THANH DINH TRAN (hereinafter "Respondent"), alleges
19 as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about August 28, 1997.

24 II

25 Complainant, Les R. Bettencourt, a Deputy Real Estate
26 Commissioner of the State of California, makes this Statement of
27 Issues in his official capacity and not otherwise.

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III

On or about August 19, 1997, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of Section 496 of the California Penal Code (Possession of Stolen Property), a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

On or about August 19, 1997, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of Section 496 of the California Penal Code (Concealing/Selling/Withholding Stolen Property), a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

V

The crimes for which Respondent was convicted, as alleged in Paragraphs III and IV above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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1 WHEREFORE, the Complainant prays that the above-entitled
2 matter be set for hearing and, upon proof of the charges contained
3 herein, that the Commissioner refuse to authorize the issuance of,
4 and deny the issuance of, a real estate salesperson license to
5 Respondent, and for such other and further relief as may be proper
6 in the premises.

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11 LES R. BETTENCOURT
12 Deputy Real Estate Commissioner
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15 Dated at San Francisco, California,
16 this 2nd day of December, 1997.
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